

Message Text

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ACTION EB-08

INFO OCT-01 EA-07 ISO-00 CCO-00 CIAE-00 OTPE-00 FCC-01
INR-07 NSAE-00 OC-06 USIA-06 COME-00 BIB-01 OES-06
L-03 H-01 SIL-01 LAB-04 /052 W
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R 220555Z APR 77
FM AMEMBASSY TOKYO
TO SECSTATE WASHDC 7153

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E.O. 11652: N/A
TAGS: ETEL, EINV, JA
SUBJECT: U.S. COMPANIES' ATTEMPTS TO MARKET TIME-SHARING SERVICES
IN JAPAN

REF: A) 76 TOKYO 17183; B) 76 TOKYO 12232; C) 76 TOKYO
10986; D) 76 STATE 166645; E) 76 STATE 187524;
F) 76 STATE 230601; G) 76 STATE 281138.

1. SUMMARY: REF A INDICATED JAPANESE TELECOMMUNICATIONS
MINISTRY EXPECTED DECISION COULD BE REACHED BY END OF
MARCH WHETHER TWO U.S. COMPANIES COULD BEGIN INTERNATIONAL
TIME-SHARING SERVICE OPERATIONS IN JAPAN. HOWEVER,
THEIR APPLICATIONS ARE STILL BEING DELAYED. MANY SOURCES
BELIEVE THESE APPLICATIONS ARE BEING HELD UP INTENTIONALLY
AND CONTROL DATA HAS INDICATED IT INTENDS TO MAKE
APPROACHES IN WASHINGTON TO USG OFFICIALS TO SEE WHAT
ACTION CAN BE TAKEN TO FORCE GOJ APPROVAL. TELECOMMUNI-
CATIONS MINISTRY STILL CLAIMS DELAY IS DUE TO LEGAL
PROBLEMS CONCERNING QUESTION OF "MESSAGE-SWITCHING"
WHICH MIGHT TAKE PLACE WITHIN U.S. JURISDICTION, BUT
OTHER SOURCES INDICATE REAL REASON FOR DELAY IS
OPPOSITION FROM VARIOUS INTEREST GROUPS, INCLUDING
DOMESTIC TIME-SHARING COMPANIES AND JAPAN SOCIALIST
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PARTY. END SUMMARY.

2. TWO U.S. COMPANIES, DATA SERVICES FAR EAST (DSFE),
A SUBSIDIARY OF CONTROL DATA CORPORATION, AND TYMSHARE,
INC., HAVE BEEN ATTEMPTING SINCE APRIL 1976 TO
BEGIN INTERNATIONAL COMPUTER TIME-SHARING SERVICE
(TSS) OPERATIONS IN JAPAN, UTILIZING COMPUTER CENTERS

LOCATED IN THE U.S. AND LINKED TO JAPAN VIA SATELLITE (REFC). APPLICATIONS OF BOTH COMPANIES TO ESTABLISH JAPAN OFFICES WERE APPROVED IN FALL 1976 AFTER SEVERAL MONTHS DELAY. HOWEVER, ALTHOUGH COMPANIES ARE NOW LEGALLY ESTABLISHED IN JAPAN, THEY HAVE NOT BEEN ALLOWED TO BEGIN OPERATIONS BECAUSE MINISTRY OF POSTS AND TELECOMMUNICATIONS (MPT) AND ITS OPERATIVE KDD (JAPAN'S OFFICIAL INTERNATIONAL CARRIER) HAVE NOT YET APPROVED COMPANIES' REQUESTS FOR INTERNATIONAL CIRCUITS TO U.S.

3. OFFICIAL REASON GIVEN FOR DELAY IS THAT MPT IS CONCERNED U.S. COMPANIES MAY VIOLATE JAPAN'S DOMESTIC TELECOMMUNICATIONS LAW BY ENGAGING IN MESSAGE-SWITCHING WITHIN THE U.S. OR IN THIRD COUNTRIES. (MESSAGE-SWITCHING IS THE TEMPORARY STORAGE OF A MESSAGE FOR SUBSEQUENT TRANSMISSION TO ANOTHER DESTINATION.) MPT CLAIMS THAT, FOR EXAMPLE, IF TYMSHARE'S COMPUTER CENTER IN CUPERTINO, CALIFORNIA SWITCHES INCOMING DATA FROM JAPAN TO ONE OF ITS OTHER CENTERS IN HOUSTON OR VALLEY FORGE, A MESSAGE SWITCH HAS OCCURRED. SINCE THIS IS ILLEGAL UNDER JAPANESE LAW, MPT SAYS IT HAS THE RIGHT TO DENY AN INTERNATIONAL CIRCUIT. KDD HAS THEREFORE BEEN ENGAGED IN LENGTHY TECHNICAL DISCUSSIONS WITH BOTH COMPANIES, TRYING TO FIND OUT EXACTLY HOW THEIR COMMUNICATIONS NETWORKS OPERATE IN THE U.S. RECENTLY, KDD HAS EXTENDED ITS INVESTIGATION TO THE EUROPEAN OPERATIONS OF THESE COMPANIES. LIMITED OFFICIAL USE

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TYMSHARE'S PROBLEM IS FURTHER COMPLICATED IN MPT'S AND KDD'S EYES BECAUSE ITS SISTER COMPANY, TYMNET, IS AN FCC-AUTHORIZED COMMON CARRIER, AND THE JAPANESE BELIEVE THE POSSIBILITIES FOR ENGAGING IN MESSAGE-SWITCHING ARE THEREBY INCREASED.

4. IN NUMEROUS DISCUSSIONS WITH MPT OFFICIALS, EMBOFF HAS POINTED OUT THAT MESSAGE-SWITCHING, WHETHER IT WILL IN FACT OCCUR OR NOT, TAKES PLACE WITHIN LEGAL JURISDICTION OF USG, AND SPECIFICALLY THE FCC; THAT JAPAN'S JURISDICTION WOULD APPEAR TO STOP AT A POINT MID-WAY ALONG THE INTERNATIONAL CIRCUIT (REF F) OR AT THE MOST, WHEN THE MESSAGE LEAVES THE KDD CIRCUIT IN CALIFORNIA; AND THAT WE DO NOT UNDERSTAND HOW JAPANESE DOMESTIC LAW CAN BE USED TO DENY AN INTERNATIONAL CIRCUIT ON BASIS ON ACTIONS WHICH MIGHT TAKE PLACE WITHIN U.S. JURISDICTION.

5. MPT RESPONSE TO POINTS IN PARA FOUR APPEARS TO BE RELATED TO OBJECTIVE TERRITORIAL PRINCIPLE IN INTERNATIONAL LAW, I.E., JAPAN CLAIMS JURISDICTION UNDER ITS DOMESTIC TELECOMMUNICATIONS LAW EVEN THOUGH THE "CRIME" OF MESSAGE-SWITCHING TAKES PLACE ON U.S. OR FOREIGN SOIL BECAUSE ESSENTIAL CONSTITUENT ELEMENTS OF THE "CRIME", (E.G., SELLING TIME-SHARING SERVICES, UTILIZING A JAPANESE CIRCUIT, SENDING DATA OVERSEAS TO COMMIT THE "CRIME", ETC.) TAKE PLACE ON JAPANESE TERRITORY. MPT SAYS THAT ON THIS BASIS, IT CAN DENY THE PROVISION OF A CIRCUIT.

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6. AS EMBASSY REPORTED IN REF B, WE ARE NOT CERTAIN OF APPLICATION OF INTERNATIONAL LAW IN THIS CASE. BASED ON DEPARTMENT'S RESPONSE IN REF F, HOWEVER, WE BELIEVE THAT MPT APPLICATION OF THE OBJECTIVE TERRITORIAL PRINCIPLE IS NOT APPROPRIATE IN TELECOMMUNICATIONS. DEPARTMENT'S GUIDANCE ON THIS POINT WOULD BE APPRECIATED, HOWEVER, AS IT IS CRITICAL TO THE RESOLUTION OF THIS PROBLEM.

7. IN ADDITION TO LEGAL PROBLEMS DESCRIBED ABOVE, THERE ARE A NUMBER OF OTHER PRACTICAL PROBLEMS INVOLVED. AS REPORTED IN REF C, JAPAN'S DOMESTIC TELECOMMUNICATIONS COMPANY NTT HOLDS 60 PERCENT OF THE TSS MARKET AND OBVIOUSLY DOES NOT LOOK WITH FAVOR ON THE ARRIVAL OF FOREIGN COMPETITION. JAPAN'S MANY PRIVATE TSS COMPANIES ARE SMALL AND FEELING THREATENED BY U.S. COMPETITION, THEY HAVE PETITIONED MPT TO OPPOSE THE ENTRY OF DSFE AND TYMSHARE.

GE-DENTSU, WHICH IS ALLOWED TO ENGAGE IN THE VERY KIND OF INTERNATIONAL TIME-SHARING WHICH DSFE AND TYMSHARE ARE BEING DENIED, ENJOYS A MONOPOLY IN THE FIELD OF INTERNATIONAL TIME-SHARING. (GE APPEARS TO BENEFIT FROM DENTSU'S POLITICAL CLOUT; REPORTEDLY AMONG THE USERS OF THE GE-DENTSU SERVICE ARE MITI LIMITED OFFICIAL USE

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AND THE RULING LDP, WHICH USES THE CLEVELAND-BASED SYSTEM FOR ELECTION FORECASTS.) NTT'S LABOR UNION, CONCERNED ABOUT POSSIBLE JOB LOSSES DUE TO FOREIGN COMPETITION, REPORTEDLY ALSO HAS APPEALED TO THE JAPAN SOCIALIST PARTY (JSP) WHICH HAS ESTABLISHED A SPECIAL COMMITTEE ON TIME-SHARING HEADED BY A JSP DIET MEMBER WHO IS THE FORMER HEAD OF THE NTT LABOR UNION. IN ADDITION, BOTH THE UPPER AND LOWER HOUSE TELECOMMUNICATIONS COMMITTEES ARE HEADED BY JSP MEMBERS. AS ALL OF THIS INDICATES, THERE ARE MANY NON-LEGAL MATTERS WHICH ALSO MAY BE CAUSING DELAYS IN THE APPROVAL OF THE DSFE AND TYMSHARE APPLICATIONS.

8. BECAUSE IT APPEARS APPROVAL FROM MPT WILL NOT BE FORTHCOMING, DSFE AND ITS U.S. PARENT, CONTROL DATA, HAVE DECIDED TO PRESENT THEIR PROBLEM TO USG OFFICIALS IN WASHINGTON AND ASK FOR HIGH-LEVEL USG PRESSURE ON THE GOJ IN THIS MATTER.

9. ACTION REQUESTED: EMBASSY WOULD APPRECIATE FURTHER CLARIFICATION OF LEGAL POINTS DISCUSSED IN PARAS FOUR, FIVE, AND SIX ABOVE.
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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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